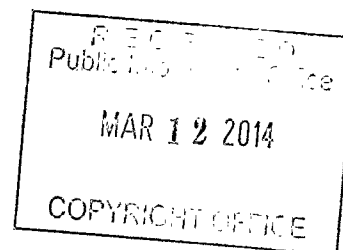


Before the
COPYRIGHT ROYALTY BOARD
LIBRARY OF CONGRESS
Washington, D.C.



In The Matter Of:

Determination of Royalty Rates
for Digital Performance in Sound
Recordings and Ephemeral
Recordings (Web IV)

14-CRB-0001-WR (2016-2020)

**THE NATIONAL ASSOCIATION OF BROADCASTERS'
CONSOLIDATED (1) JOINDER IN PANDORA'S MOTION FOR
ISSUANCE OF SUBPOENAS AND (2) MOTION FOR ISSUANCE OF
SUBPOENAS TO APPLE INC. AND THE THREE MAJOR RECORD LABELS**

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INTRODUCTION AND SUMMARY

The National Association of Broadcasters ("NAB") hereby joins Pandora Media, Inc.'s ("Pandora's") Motion for Issuance of Subpoenas and requests that the documents subject to Pandora's subpoenas be made available to NAB as well. Pandora's motion should be granted because the Copyright Royalty Judges' ("Judges'") determination in this proceeding will be substantially impaired if only a single party representing licensors has comprehensive access to the core evidence -- privately negotiated license agreements for the public performance of sound recordings -- on which rates in all three of the prior litigated webcasting proceedings were based.

NAB also asks the Judges to issue similar subpoenas to (1) Apple Inc., which has entered into direct licenses for its iTunes Radio service but was excluded from Pandora's motion only because of Pandora's counsel's inability to take a position potentially adverse to Apple, and (2) the three major record labels, which (a) inevitably have knowledge of agreements with services making public performances of sound recordings other than those identified by Pandora and (b) are a logical and efficient source of sound recording license agreements that they have entered.¹

Absent access by the services to the agreements sought by Pandora and NAB in time to analyze them and incorporate them as appropriate into their direct cases, the Judges would be forced to base their determination on a skewed and imbalanced evidentiary record including:

- (a) a direct case by SoundExchange that discusses and presents economic analysis regarding only those agreements selected by (and favoring) SoundExchange, based on its comprehensive knowledge of available agreements between its member labels and statutory as well as interactive services; but
- (b) incomplete direct cases by individual services that discuss and present economic analysis regarding only the narrow set of agreements known separately by each service and that cannot analyze the broader market.

¹ NAB has followed Pandora's subpoena form by providing subpoenas listing the Copyright Royalty Board as the issuing party. If the Judges prefer, counsel for NAB is available to effectuate service of the subpoenas at the Judges' instruction. NAB is serving Apple and the major labels with a copy of these moving papers.

This fundamental imbalance and deficiency in the direct cases presented to the Judges will not be cured by the limited opportunity to file a post discovery update or by a rebuttal case.

The Judges have the necessary authority to prevent this substantial impairment by issuing the requested subpoenas, thereby enabling the Judges to base their determination on a record where the positions and underlying supporting evidence of both sides of the “willing buyer willing seller” equation are fully and fairly presented. Pandora’s and NAB’s motions should be granted and the subpoenas should be issued in time to require responses by May 1, 2014 so that the services’ economic experts have the opportunity to assess the significance of the produced information and the services have the opportunity to provide the Judges with direct cases that fairly take this evidence into account from the buyer-side perspective.

ARGUMENT

I. ABSENT ISSUANCE OF THE REQUESTED SUBPOENAS, THE JUDGES’ DETERMINATION WILL BE SUBSTANTIALLY IMPAIRED BECAUSE IT WILL BE BASED ON A SKEWED AND INCOMPLETE EVIDENTIARY RECORD.

Pandora provided ample reasons supporting issuance of its targeted subpoenas; NAB supports those arguments. NAB writes separately to emphasize that the statutory “substantial impairment” standard for issuing the subpoenas is met.

As the United States Supreme Court has stated, “[m]utual knowledge of all the relevant facts gathered by both parties is essential to proper litigation.” *Société Nationale Industrielle Aérospatiale v. U.S. Dist. Court for the S. Dist. of Iowa*, 482 U.S. 522, 540 n.25 (1987) (quoting *Hickman v. Taylor*, 329 U.S. 495, 507 (1947) (alteration in original)). “Basic justice dictates that both sides be treated equally, with each having equal access to the evidence in the possession or under the control of the other.” *In re Union Carbide Corp. Gas Plant Disaster at Bhopal, India in Dec., 1984*, 809 F.2d 195, 205 (2d Cir. 1987). Permitting the requested subpoenas will ensure

that the proceeding is fair to all parties so that “basic justice” is served and the Judges can perform their statutory function. Indeed, a key purpose of granting subpoena power in the Copyright Royalty and Distribution Reform Act was to provide the Judges a mechanism to ensure a complete and balanced record to enable them to make a fair and balanced decision. *See* H.R. Rep. No. 108-408, at 33, 100 (2004) (criticizing the prior Copyright Arbitration Royalty Panel’s discovery process with no subpoena power as one in which “the arbitrators are left with no real mechanism to gain the information they often need to make a fair and balanced decision”) (statement of Rep. Smith).

Similarly, the Judges themselves have expressed the desire to receive evidence from all parties and their economic experts to help the Judges employ an “optimal economic analysis” in determining rates and terms in this proceeding:

The Judges are best served if the participants, their economic witnesses, and their counsel craft arguments in a manner that assists the Judges in identifying and applying the optimal economic analysis when establishing rates and terms pursuant to the Act.

Determination of Royalty Rates for Digital Performance in Sound Recordings and Ephemeral Recordings (Web IV): Notice Announcing Commencement of Proceeding, 79 Fed. Reg. 412, 413 (Jan. 3, 2014). In each of the three litigated webcasting proceedings to date, the economic analyses that the Judges (and previously, the Copyright Arbitration Royalty Panel (“CARP”)) found to be “optimal” – and from which they determined their rates – were based on negotiated license agreements for the public performance of sound recordings, either statutory or non-statutory. *Determination of Reasonable Rates and Terms for the Digital Performance of Sound Recordings and Ephemeral Recordings: Final Rule and Order*, 67 Fed. Reg. 45,240, 45,245 (July 8, 2002) (“*Web I Decision*”) (relying on agreement between RIAA and Yahoo!, Inc.); *Digital Performance Right in Sound Recordings and Ephemeral Recordings: Final Rule and*

Order, 72 Fed. Reg. 24,084, 24,095 (May 1, 2007) (“*Web II Decision*”) (relying on agreements between the major record labels and certain interactive on-demand services); *Determination After Remand of Rates and Terms for Royalty Years 2011-2015*, Docket No. 2009-1 CRB (*Webcasting III*), at 65-66 (Jan. 9, 2014) (“*Web III Remand*”) (relying, in part, on agreements between the major record labels and certain interactive, on-demand services). Moreover, SoundExchange repeatedly has relied on such license agreements in support of its rate proposal in prior proceedings. *See, e.g., Web II Decision* at 24,092; *Web III Remand* at 48.

Given the central role that sound recording performance license agreements historically have played and the Judges’ own expressed desire to receive “optimal economic analysis” from all participants, the Judges need to have a comprehensive evidentiary record before them regarding the full range of these agreements and how both buyers (webcasting services) and sellers (record companies) view them. But absent issuance of the requested subpoenas, such a record will not exist. Specifically, SoundExchange, as the representative of the entire recording industry, with each of the three major labels as well as independent labels represented on its Board, likely has access to the vast majority, if not all, of these agreements, between its member labels and both noninteractive and interactive services. Pandora has submitted testimony attesting to SoundExchange’s ready access to these agreements. *See* Decl. of Christopher Harrison ¶¶ 4-5 (Mar. 10, 2014) (“Harrison Decl.”) (attesting to SoundExchange’s access to license agreements between Apple and the major record labels); Decl. of R. Bruce Rich in Supp. of Pandora’s Mot. for Issuance of Subpoenas ¶¶ 7, 18 (Mar. 10, 2014) (“Rich Decl.”) (“It is evident that the major record companies . . . freely share these otherwise non-public agreements with SoundExchange.”). This access is confirmed by SoundExchange’s economic testimony and rate proposals in prior proceedings, each of which was based on numerous such agreements that

had been provided to its economic experts before written direct cases were due and the 60-day document discovery period had commenced. *See, e.g., Web II Decision* at 24,092; *Web III Remand* at 48; Rich Decl. ¶ 18.

The services, by contrast, do not have such access. Rather, each service will have in its possession only a small slice of the universe, consisting of the agreements, if any, that it has signed itself and the handful of agreements that are a matter of public record. Moreover, given the nature of NAB's radio broadcaster members' streaming, NAB will have no access to interactive service agreements, upon which SoundExchange repeatedly has relied in past proceedings, including *Web II*, *Web III* and the two prior satellite radio cases.

As a result, unless the Judges issue the requested subpoenas, they will not receive robust licensing evidence and accompanying economic analyses that fully and fairly take into account the volume and range of privately negotiated agreements. Rather, as history has demonstrated, the Judges will receive the agreements SoundExchange selects, entered into by the major record labels with selected types of services, supporting the rates sought by the recording industry. The services, on the other hand, will not have the complete picture of the market necessary to present the Judges with the evidence and economic analysis that would enable the Judges to render a balanced and accurate decision. By definition, such a one-sided evidentiary record will not approach the "optimal economic analysis" that the Judges seek and thus will significantly impair the Judges' ability to determine the rates that would prevail in an effectively competitive market, which is their congressionally assigned task. *See* 17 U.S.C. § 114(f)(2)(B); *CARP Report*, Docket No. 2000-9 CARP DTRA 1 & 2, at 25 (Feb. 20, 2002) ("[T]he Panel construes the statutory reference . . . as the rates to which, absent special circumstances, most willing buyers

and willing sellers would agree.”); *Web III Remand* at 45 n.37 (affirming that statutory rate-setting standard requires an “effectively competitive market”).

Apart from the statutorily authorized subpoena process, the webcasting services have no effective way to obtain the broad range of interactive and non-interactive sound recording license agreements for use in their written direct cases. As Pandora observed, the 15-day amendment process is ineffective, as the information produced during the non-subpoena discovery process will arrive too late to be analyzed and meaningfully included in any amendment, and the requests for information about agreements other than those selectively relied upon by SoundExchange are likely to be the subject of extended motions practice, further delaying – or perhaps even denying – the services’ access to them. Pandora’s Mot. for Issuance of Subpoenas 15 (Mar. 10, 2014) (“Pandora Mot.”).

Nor is the rebuttal phase a substitute for presentation of a comprehensive direct case. Rebuttal cases historically have been viewed by the Judges as directed towards rebutting the direct cases presented by adverse parties rather than developing new affirmative theories, and the parties often have resisted efforts by their adversaries to expand that scope. *See, e.g., Notice of Participants, Commencement of Voluntary Negotiation Period, and Case Scheduling Order 3* (Feb. 19, 2014) (“[T]he Judges remind parties that Written Rebuttal Statements shall be limited to rebuttal testimony of witnesses and legal memoranda addressing solely and directly issues raised in the direct case and remaining for the Judges to hear and determine.”). Moreover, as a practical matter, the rebuttal phase is highly compressed, which limits the ability to develop and present affirmative theories, and it comes only at the very end of the case, when it is likely to be very difficult to overcome impressions that already have been formed by the preceding months of litigation. *See* Pandora Mot. at 16. It is thus essential that the services gain access to the

requested agreements through the subpoena process at this stage of the proceeding so that they have sufficient time to assess the economic significance of these agreements and prepare and provide to the Judges direct cases that fully and fairly reflect “buyers’ side” economic analyses based on existing marketplace evidence.

II. GRANTING THE SUBPOENAS ALSO WILL ENCOURAGE SETTLEMENT, AN IMPORTANT GOAL OF THE LEGISLATION ESTABLISHING THE COPYRIGHT ROYALTY JUDGES.

As an added benefit, requiring production of the requested agreements and related information may promote settlement of this proceeding, which is an important goal of the legislation establishing the Copyright Royalty Judges. *See, e.g.*, 17 U.S.C. § 801(b)(7)(A) (granting the Judges authority to adopt settlement agreements “as a basis for statutory terms and rates”); *id.* § 803(b)(6)(C)(x) (requiring the Judges to “order a settlement conference among the participants in the proceeding to facilitate the presentation of offers of settlement among the participants” after the close of discovery). In the related legislative report, the House Judiciary Committee emphasized the importance of promoting settlements, stating that it “intends that the bill as reported will facilitate and encourage settlement agreements for determining royalty rates.” H.R. Rep. No. 108-408, at 30, 33. The Committee described the benefits of such settlements as “reduc[ing] the need to conduct full-fledged ratesetting and distribution proceedings,” which “will generate savings while expediting the disposition of proceedings.” *Id.* at 24.

The discovery sought by Pandora and NAB will increase the likelihood of such settlement. Parties are more likely to settle, and to settle earlier, when they have equal access to relevant information. Information deficits promote litigation, in part to cure the deficit. Congress understood this characteristic, “recogniz[ing] that information obtained during the discovery process may alter a pre-discovery position, making the affected party more likely to

engage in settlement negotiations.” *Id.* at 33-34. The requested subpoenas should be issued to foster this important goal.

III. THE JUDGES HAVE AUTHORITY TO ISSUE THE REQUESTED SUBPOENAS.

There should be no question that the Judges have the necessary authority to issue the subpoenas. The statute authorizes issuance of document subpoenas to “a participant or witness” where the Judges’ determination “would be substantially impaired by the absence of such . . . documents.” 17 U.S.C. § 803(b)(6)(C)(ix). In the prior webcasting proceeding, the Register found that “witness” “includes anyone who knows something that is relevant” and “includes witnesses who are nonparticipants, including those who have not previously been designated by a participant as a witness as well as those whose testimony has not been filed as part of a written direct statement.” *Mem. Op. on Material Questions of Substantive Law*, Docket No. 2009-1 CRB Webcasting III, at 5 (Feb. 22, 2010). “[T]he Register conclude[d] that the CRJs do have the authority to subpoena a witness to . . . produce and permit inspection of documents or tangible things even when that witness is not a participant in the proceeding and his or her testimony has not yet been submitted in the proceeding.” *Id.* at 8. Because the “substantial impairment” standard is met, as set forth in Part I, above, the Judges have authority to issue the requested subpoenas to the identified companies.²

IV. SUBPOENAS SHOULD BE ISSUED TO APPLE AND THE THREE MAJOR RECORD LABELS IN ADDITION TO THE SERVICES IDENTIFIED BY PANDORA.

In addition to joining Pandora’s request, NAB requests that the Judges issue the four attached subpoenas to Apple Inc. and the three major record labels – *i.e.*, Sony Music Entertainment, Universal Music Group, and Warner Music Group. *See* Exs. A-D. Apple has

² NAB would work with all parties to this proceeding to ensure that an appropriate protective order is proposed to the Judges well before the response date for the subpoenas and to minimize unwarranted burdens to the subpoenaed entities.

petitioned to participate in this proceeding, and the three major labels will be deeply involved. Each of the major labels has participated in rate proceedings before the Judges, providing testimony on behalf of SoundExchange. *See, e.g., Web III Remand* at 12 (noting testimony by witness from Warner Music Group); *Web II Decision* at 24,084-85 (noting testimony by witnesses from Sony BMG, Universal Music Group, North American, Universal Music Enterprises, Universal eLabs, Warner Music Group, and Atlantic Records Group). In any event, Apple and the major labels are “witnesses” who have entered into sound recording licenses that will be relevant in this proceeding.

It has been widely reported in the press that Apple has entered into sound recording performance agreements with each of the major record labels as well as certain independent labels for its iTunes Radio service.³ The rates and terms of these agreements have not been publicly released by Apple.⁴ Given Apple’s prominence and size, the services (including their economic experts) should have the opportunity to review such agreements and address them in their affirmative cases, particularly given that SoundExchange already is aware of the contents of those agreements. *See* Harrison Decl. ¶¶ 4-5. By permitting such access, the Judges will be able to obtain economic analyses of those agreements from both the buyers and sellers in the marketplace, thus fostering a fairer and more balanced evidentiary record.

³ *See* Ryan Bradley, *Apple enters the streaming music game*, Fortune (June 11, 2013, 12:57 PM), <http://tech.fortune.cnn.com/2013/06/11/itunes-radio-pandora/>; Hannah Karp & Jessica E. Lessin, *Apple Spells Out iTunes Radio Terms*, Wall St. J. (June 26, 2013, 7:50 PM), <http://blogs.wsj.com/digits/2013/06/26/apple-spells-out-itunes-radio-terms-for-record-labels/>; Ben Sisario, *With iTunes Radio, Apple Takes Aim at Pandora*, N.Y. Times (Sept. 10, 2013), http://www.nytimes.com/2013/09/11/business/media/with-itunes-radio-apple-takes-aim-at-pandora.html?_r=0. True and correct copies of these articles are attached as Exhibit E.

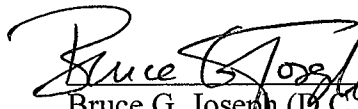
⁴ A form of agreement that Apple was allegedly making available to independent labels was previously leaked but is no longer publicly available. Moreover, the status of that document has never been authenticated, and the actual terms and related payments and reports under Apple’s agreements with independent and major labels have never been published.

Similarly, the three major record labels likely have entered into agreements with services other than those identified by Pandora. Rather than requiring the services to speculate about the existence of such agreements, the record companies are a logical and efficient source of (a) sound recording license agreements that they have entered and (b) the payment and reporting information related to those agreements.

CONCLUSION

For the foregoing reasons, Pandora's motion should be granted, and the produced documents should be made available to NAB and other participants in addition to Pandora. In addition, the attached subpoenas should be issued. NAB respectfully requests that the subpoenas be issued in time to require responses by May 1, 2014 to give the services' economic experts the opportunity to assess the significance of the produced information and to give the services the opportunity to provide the Judges with direct cases that fairly take this evidence into account from the buyer-side perspective.

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Dated: March 12, 2014

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| Paul M. Robinson Executive Vice President and General Counsel Paul.Robinson@wmg.com Silda Palerm VP and Senior Litigation Counsel Silda.Palerm@wmg.com Warner Music Group Corp. 75 Rockefeller Plaza New York, NY 10019 | Julie Swidler Executive VP of Business Affairs and General Counsel Julie.Swidler@sonymusic.com Wade Leak Senior VP, Deputy General Counsel Wade.Leak@sonymusic.com Sony Music Entertainment Inc. 550 Madison Ave New York, NY 10022 |

Kamryn K. Ablin

EXHIBIT A

**Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
Washington, D.C.**

In the Matter of

**DETERMINATION OF RATES AND TERMS
FOR DIGITAL PERFORMANCE IN SOUND
RECORDINGS AND EPHEMERAL
RECORDINGS (WEB IV)**

**Docket No. 14-CRB-0001-WR
CRB Web IV**

**SUBPOENA DUCES TECUM
TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS**

| | |
|---|--|
| THE COPYRIGHT ROYALTY JUDGES TO: | <i>(name and address of person being subpoenaed)</i> Apple Inc. c/o C T Corporation System 818 West Seventh Street Los Angeles, CA 90017 |
| 1. At the Request of : <i>(party name)</i> The National Association of Broadcasters | <i>(name, address, and telephone of contact person)</i> Michael L. Sturm Wiley Rein LLP 1776 K Street, NW Washington, DC 20006 202-719-7008 msturm@wileyrein.com |

YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection or copying of the material requested in the attached **Schedule A**.

| | |
|---|---|
| Place: Wiley Rein LLP 1776 K Street, NW Washington, DC 20006 (or a place to be mutually agreed upon by the parties) | Date and Time: May 1, 2014 at 9:00am (EDT) |
|---|---|

Issuing Officer Signature and Title:

Date:

Issuing Officer's Name, Address, and Telephone Number:

PROOF OF SERVICE

| | | |
|------------------------|------|--------------------|
| SERVED | Date | Place |
| | | |
| Served on (Print Name) | | Manager or Service |
| Served by (Print Name) | | Title |

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on this ____ day of ____, 20____

Signature of Server

Address of Server

SCHEDULE A

REQUESTS FOR DOCUMENTS

1. Each agreement relating to Apple's iTunes Radio service that includes a grant of the right to make public performances of sound recordings in effect or entered into during the Period between Apple and (a) a Record Company; (b) a distributor affiliated with or owned by one or more Record Companies (*e.g.*, ADA, Red Associated Labels, Caroline); or (c) entities such as BMG, Orchard, Merlin, and IODA that represent and enter into agreements on behalf of independent Record Companies or artists.

2. For each agreement produced or requested to be produced in response to Request No. 1, each royalty statement, statement of account, and any other report (other than logs of specific recordings performed) provided from Apple to the Record Company or other licensor for each quarterly reporting period (or other regular reporting period specified by the agreement) during the Period.

3. To the extent not included in the statements and reports produced in response to Request No. 2, Documents sufficient to show, on a monthly basis (or quarterly basis if that is the shortest basis on which Apple reports to its licensors) during the Period: (1) the number of performances of sound recordings made by or over the iTunes Radio service that are streamed to subscribers to iTunes Match; (2) the number of performances of sound recordings made by or over the iTunes Radio service to listeners that are not subscribers to iTunes Match; (3) the number of performances of sound recordings made by or over the iTunes Radio service to mobile devices; (4) the number of performances of sound recordings made by or over the iTunes Radio service to desktop/laptop computers; (5) the dollar amounts of any (a) advertising revenue, (b) subscription revenue, and (c) other revenue (each as required to be computed under the

agreements, *e.g.*, net of commissions); and (6) total dollar amounts paid by or on behalf of Apple in connection with its iTunes Radio service to each Record Company or other licensor of sound recordings and how those payments were calculated.

4. For each agreement produced or requested to be produced in response to Request No. 1, Documents sufficient to show any advances and equity grants paid or provided by Apple to the Record Company.

SCHEDULE B

DEFINITIONS

1. "Apple," "you," and "your" means Apple Inc. and its subsidiaries and affiliates.
2. "Document" and "Documents" have the same meaning as the term "document" in Rule 34(a) of the Federal Rules of Civil Procedure and include electronically stored information.
3. "Period" means the time period from January 1, 2010 to the present.
4. "Record Company" means any person or entity that owns sound recording copyrights, including any and all subsidiary or affiliate recording companies and labels.
5. The term "any" includes and encompasses the words "each" and "all." The terms "each" and "all" include and encompass the word "any."
6. The terms "and" and "or" shall be construed conjunctively or disjunctively as necessary to make the request, definition, or instruction inclusive rather than exclusive.

INSTRUCTIONS

1. These requests are continuing in nature, and in the event that Apple becomes aware of additional responsive information or Documents at any time through the conclusion of this proceeding, Apple is requested promptly to provide such additional information or Documents.
2. These requests seek information related only to your activities (or the activities of your users) in the United States. To the extent responsive Documents pertain to activities both within and outside the U.S., they should be produced in full.
3. These requests are intended to include all requested Documents in your possession, custody, or control or that are otherwise available to you, including Documents in the possession, custody, or control of your attorneys, agents, officers, employees, accountants,

consultants, representatives, or any other person acting or purporting to act on your behalf, wherever located and by whomever prepared.

4. A request for any Document shall be deemed to include a request for any transmittal sheets, cover letters, exhibits, enclosures, or attachments to such Document, in addition to the Document in its full and unexpurgated form.

5. If there are no Documents responsive to any particular request, please so state in writing.

EXHIBIT B

**Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
Washington, D.C.**

In the Matter of

**DETERMINATION OF RATES AND TERMS
FOR DIGITAL PERFORMANCE IN SOUND
RECORDINGS AND EPHEMERAL
RECORDINGS (WEB IV)**

**Docket No. 14-CRB-0001-WR
CRB Web IV**

**SUBPOENA DUCES TECUM
TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS**

| | |
|---|---|
| THE COPYRIGHT ROYALTY JUDGES TO: | <i>(name and address of person being subpoenaed)</i> Sony Music Entertainment Inc. c/o Wade Leak, Business and Legal Affairs Department 550 Madison Ave New York, NY 10022 |
| 1. At the Request of : <i>(party name)</i> The National Association of Broadcasters | <i>(name, address, and telephone of contact person)</i> Michael L. Sturm Wiley Rein LLP 1776 K Street, NW Washington, DC 20006 202-719-7008 msturm@wileyrein.com |

YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection or copying of the material requested in the attached **Schedule A**.

| | |
|---|---|
| Place: Wiley Rein LLP 1776 K Street, NW Washington, DC 20006 (or a place to be mutually agreed upon by the parties) | Date and Time: May 1, 2014 at 9:00am (EDT) |
|---|---|

Issuing Officer Signature and Title:

Date:

Issuing Officer's Name, Address, and Telephone Number:

PROOF OF SERVICE

| | | |
|------------------------|------|--------------------|
| SERVED | Date | Place |
| | | |
| Served on (Print Name) | | Manager or Service |
| Served by (Print Name) | | Title |

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on this ____ day of ____, 20__

Signature of Server

Address of Server

SCHEDULE A

REQUESTS FOR DOCUMENTS

1. Each agreement that includes a grant of the right to make public performances of sound recordings in effect or entered into during the Period between Sony Music and any Webcasting Service.
2. For each agreement produced or requested to be produced in response to Request No. 1, each royalty statement, statement of account, and any other report (other than logs of specific recordings performed) provided regarding the agreement to Sony Music from a Webcasting Service for each quarterly reporting period (or other regular reporting period specified by the agreement) during the Period.
3. For each agreement produced or requested to be produced in response to Request No. 1, Documents sufficient to show any advances and equity grants paid or provided by a Webcasting Service (or other related entity) to Sony Music.

SCHEDULE B

DEFINITIONS

1. "Document" and "Documents" have the same meaning as the term "document" in Rule 34(a) of the Federal Rules of Civil Procedure and include electronically stored information.
2. "Period" means the time period from January 1, 2010 to the present.
3. "Sony Music," "you," and "your" means Sony Music Entertainment Inc. and its subsidiaries and affiliates.
4. "Webcasting Service" means any service that makes public performances of sound recordings over the Internet or over wireless, mobile, cellular, or other digital networks, including services engaged in non-interactive streaming and services engaged in interactive or "on demand" streaming.
5. The term "any" includes and encompasses the words "each" and "all." The terms "each" and "all" include and encompass the word "any."
6. The terms "and" and "or" shall be construed conjunctively or disjunctively as necessary to make the request, definition, or instruction inclusive rather than exclusive.

INSTRUCTIONS

1. These requests are continuing in nature, and in the event that Sony Music becomes aware of additional responsive information or Documents at any time through the conclusion of this proceeding, Sony Music is requested promptly to provide such additional information or Documents.
2. These requests seek information related only to your activities (or the activities of your licensees) in the United States. To the extent responsive Documents pertain to activities both within and outside the U.S., they should be produced in full.

3. These requests are intended to include all requested Documents in your possession, custody, or control or that are otherwise available to you, including Documents in the possession, custody, or control of your attorneys, agents, officers, employees, accountants, consultants, representatives, or any other person acting or purporting to act on your behalf, wherever located and by whomever prepared.

4. A request for any Document shall be deemed to include a request for any transmittal sheets, cover letters, exhibits, enclosures, or attachments to such Document, in addition to the Document in its full and unexpurgated form.

5. If there are no Documents responsive to any particular request, please so state in writing.

EXHIBIT C

**Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
Washington, D.C.**

In the Matter of

**DETERMINATION OF RATES AND TERMS
FOR DIGITAL PERFORMANCE IN SOUND
RECORDINGS AND EPHEMERAL
RECORDINGS (WEB IV)**

**Docket No. 14-CRB-0001-WR
CRB Web IV**

**SUBPOENA DUCES TECUM
TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS**

| | |
|---|--|
| THE COPYRIGHT ROYALTY JUDGES TO: | <i>(name and address of person being subpoenaed)</i> Universal Music Group, Inc. c/o C T Corporation System 111 Eighth Avenue New York, NY 10011 |
| 1. At the Request of : <i>(party name)</i> The National Association of Broadcasters | <i>(name, address, and telephone of contact person)</i> Michael L. Sturm Wiley Rein LLP 1776 K Street, NW Washington, DC 20006 202-719-7008 msturm@wileyrein.com |

YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection or copying of the material requested in the attached **Schedule A**.

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| Place: Wiley Rein LLP 1776 K Street, NW Washington, DC 20006 (or a place to be mutually agreed upon by the parties) | Date and Time: May 1, 2014 at 9:00am (EDT) |
|---|---|

Issuing Officer Signature and Title:

Date:

Issuing Officer's Name, Address, and Telephone Number:

PROOF OF SERVICE

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|------------------------|------|--------------------|
| SERVED | Date | Place |
| | | |
| Served on (Print Name) | | Manager or Service |
| Served by (Print Name) | | Title |

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on this ____ day of ____, 20____

Signature of Server

Address of Server

SCHEDULE A

REQUESTS FOR DOCUMENTS

1. Each agreement that includes a grant of the right to make public performances of sound recordings in effect or entered into during the Period between UMG and any Webcasting Service.
2. For each agreement produced or requested to be produced in response to Request No. 1, each royalty statement, statement of account, and any other report (other than logs of specific recordings performed) provided regarding the agreement to UMG from a Webcasting Service for each quarterly reporting period (or other regular reporting period specified by the agreement) during the Period.
3. For each agreement produced or requested to be produced in response to Request No. 1, Documents sufficient to show any advances and equity grants paid or provided by a Webcasting Service (or other related entity) to UMG.

SCHEDULE B

DEFINITIONS

1. "Document" and "Documents" have the same meaning as the term "document" in Rule 34(a) of the Federal Rules of Civil Procedure and include electronically stored information.
2. "Period" means the time period from January 1, 2010 to the present.
3. "UMG," "you," and "your" means Universal Music Group, Inc. and its subsidiaries and affiliates.
4. "Webcasting Service" means any service that makes public performances of sound recordings over the Internet or over wireless, mobile, cellular, or other digital networks, including services engaged in non-interactive streaming, and services engaged in interactive or "on demand" streaming.
5. The term "any" includes and encompasses the words "each" and "all." The terms "each" and "all" include and encompass the word "any."
6. The terms "and" and "or" shall be construed conjunctively or disjunctively as necessary to make the request, definition, or instruction inclusive rather than exclusive.

INSTRUCTIONS

1. These requests are continuing in nature, and in the event that UMG becomes aware of additional responsive information or Documents at any time through the conclusion of this proceeding, UMG is requested promptly to provide such additional information or Documents.
2. These requests seek information related only to your activities (or the activities of your licensees) in the United States. To the extent responsive Documents pertain to activities both within and outside the U.S., they should be produced in full.

3. These requests are intended to include all requested Documents in your possession, custody, or control or that are otherwise available to you, including Documents in the possession, custody, or control of your attorneys, agents, officers, employees, accountants, consultants, representatives, or any other person acting or purporting to act on your behalf, wherever located and by whomever prepared.

4. A request for any Document shall be deemed to include a request for any transmittal sheets, cover letters, exhibits, enclosures, or attachments to such Document, in addition to the Document in its full and unexpurgated form.

5. If there are no Documents responsive to any particular request, please so state in writing.

EXHIBIT D

**Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
Washington, D.C.**

In the Matter of

**DETERMINATION OF RATES AND TERMS
FOR DIGITAL PERFORMANCE IN SOUND
RECORDINGS AND EPHEMERAL
RECORDINGS (WEB IV)**

**Docket No. 14-CRB-0001-WR
CRB Web IV**

**SUBPOENA DUCES TECUM
TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS**

| | |
|---|---|
| THE COPYRIGHT ROYALTY JUDGES TO: | <i>(name and address of person being subpoenaed)</i> Warner Music Group Corp. c/o Silda Palerm, Vice President & Senior Litigation Counsel 75 Rockefeller Plaza New York, NY 10019 |
| 1. At the Request of : <i>(party name)</i> The National Association of Broadcasters | <i>(name, address, and telephone of contact person)</i> Michael L. Sturm Wiley Rein LLP 1776 K Street, NW Washington, DC 20006 202-719-7008 msturm@wileyrein.com |

YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection or copying of the material requested in the attached **Schedule A**.

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|---|---|
| Place: Wiley Rein LLP 1776 K Street, NW Washington, DC 20006 (or a place to be mutually agreed upon by the parties) | Date and Time: May 1, 2014 at 9:00am (EDT) |
|---|---|

Issuing Officer Signature and Title:

Date:

Issuing Officer's Name, Address, and Telephone Number:

PROOF OF SERVICE

| | | |
|------------------------|------|--------------------|
| SERVED | Date | Place |
| | | |
| Served on (Print Name) | | Manager or Service |
| | | |
| Served by (Print Name) | | Title |
| | | |

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on this ____ day of ____, 20____

Signature of Server

Address of Server

SCHEDULE A

REQUESTS FOR DOCUMENTS

1. Each agreement that includes a grant of the right to make public performances of sound recordings in effect or entered into during the Period between WMG and any Webcasting Service.
2. For each agreement produced or requested to be produced in response to Request No. 1, each royalty statement, statement of account, and any other report (other than logs of specific recordings performed) provided regarding the agreement to WMG from a Webcasting Service for each quarterly reporting period (or other regular reporting period specified by the agreement) during the Period.
3. For each agreement produced or requested to be produced in response to Request No. 1, Documents sufficient to show any advances and equity grants paid or provided by a Webcasting Service (or other related entity) to WMG.

SCHEDULE B

DEFINITIONS

1. "Document" and "Documents" have the same meaning as the term "document" in Rule 34(a) of the Federal Rules of Civil Procedure and include electronically stored information.
2. "Period" means the time period from January 1, 2010 to the present.
3. "Webcasting Service" means any service that makes public performances of sound recordings over the Internet or over wireless, mobile, cellular, or other digital networks, including services engaged in non-interactive streaming.
4. "WMG," "you," and "your" means Warner Music Group Corp. and its subsidiaries and affiliates.
5. The term "any" includes and encompasses the words "each" and "all." The terms "each" and "all" include and encompass the word "any."
6. The terms "and" and "or" shall be construed conjunctively or disjunctively as necessary to make the request, definition, or instruction inclusive rather than exclusive.

INSTRUCTIONS

1. These requests are continuing in nature, and in the event that WMG becomes aware of additional responsive information or Documents at any time through the conclusion of this proceeding, WMG is requested promptly to provide such additional information or Documents.
2. These requests seek information related only to your activities (or the activities of your licensees) in the United States. To the extent responsive Documents pertain to activities both within and outside the U.S., they should be produced in full.
3. These requests are intended to include all requested Documents in your possession, custody, or control or that are otherwise available to you, including Documents in the possession,

custody, or control of your attorneys, agents, officers, employees, accountants, consultants, representatives, or any other person acting or purporting to act on your behalf, wherever located and by whomever prepared.

4. A request for any Document shall be deemed to include a request for any transmittal sheets, cover letters, exhibits, enclosures, or attachments to such Document, in addition to the Document in its full and unexpurgated form.

5. If there are no Documents responsive to any particular request, please so state in writing.

EXHIBIT E



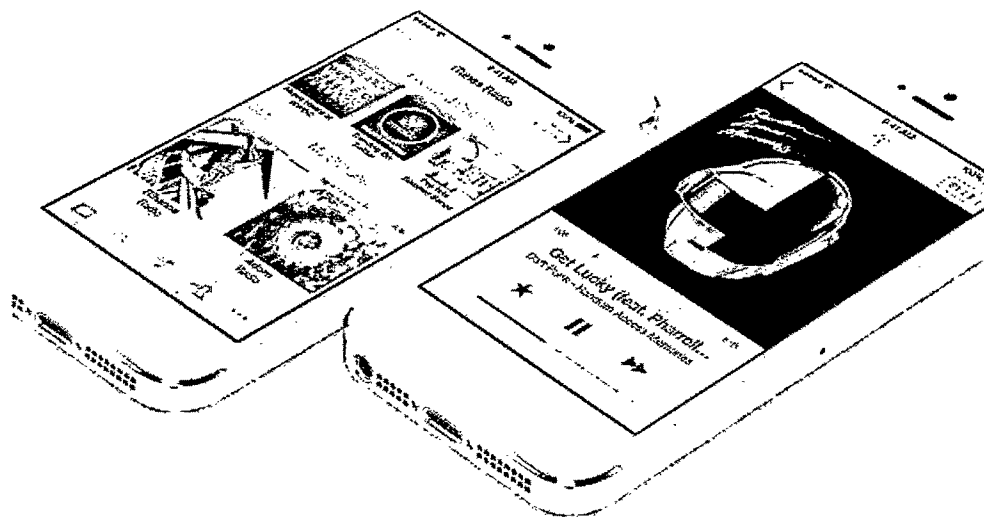
Apple enters the streaming music game

June 11, 2013: 12:57 PM ET

Recommend 7

iTunes radio will work a lot like Pandora, but is the company too late to the big music party in the cloud?

By Ryan Bradley, senior editor



COURTESY: APPLE

FORTUNE -- The short answer to the above question is no, the longer answer is maybe, and -- if you really want to speculate and think long-term -- the ultimate answer may be that iTunes, in terms of music listening, is irrelevant. Let's back up and break this down.

No, iTunes radio isn't late to the streaming music game at all. It's still early days, in fact, and Apple is a mighty big player and has signed direct deals with all the major labels for its radio station, a feat Pandora (**P**) -- currently the most heavily

used streaming radio service -- has not managed. Speaking of Pandora -- this is terrible news for Pandora. Digital Music News has an excellent **five-point argument** for why Pandora will be gone by 2018. The first point, related to all others, has to do with direct licensing. Pandora almost certainly **cannot afford to make deals** like Apple can, because for Apple, iTunes has only ever been about pushing its devices. iTunes was essential for the iPod and, today, the iPhone, but the revenues from its music sales have been minuscule but **vital to the music industry**. When all your company does is stream music, well, so far this has not proven to be a great business model.

MORE: 5 questions surrounding Apple's new streaming music platform

Maybe, however, Apple (**AAPL**) is offering something we're already used to doing elsewhere. Maybe it is, in fact, late to the streaming music game. The reality is that iTunes is a terribly bloated Chimera of a program that many have abandoned as a listening service. Still, today, 63% of all digital music purchased in the U.S. is done so through iTunes, but nearly 100 million (and many more worldwide) don't purchase individual tracks or albums digitally anymore. We're streaming, and we're streaming somewhere else. Further, if you were one of the poor suckers who signed up for iTunes match in the hopes that you could stream your entire library anywhere, you soon realized this barely worked and abandoned it for something else. If you catch a whiff of spite it's because I was one of those poor suckers. Now, since I'm paying for a service I never use, I'll get to try out iTunes radio ad-free. This would be exciting for me if hearing the words "iTunes match" didn't immediately incite violent thoughts.

LISTEN: Fortune Brainstorm Podcast on streaming music

Yes, it's late, because there are now way better ways to listen to music. Spotify, Microsoft's Rhapsody (**MSFT**), the terribly named Google Music Play All Access (**GOOG**), and -- as I rhapsodized about on *Fortune's* podcast -- Rdio, already offer something akin to the passive, radio-like listening experience. TuneIn is a very popular app that patches users in to radio stations all over the world. People are paying for these services, though not in very significant numbers. Not yet, anyway.

It goes back to the initial problem, which is turning a streaming music service into a business. Apple doesn't have to, so it doesn't have to worry as much about the fact that, for music, iTunes isn't what it used to be (the be all end all, basically). But if someone else did become popular enough, and lucrative enough, maybe then Apple would worry. A big if, sure, but it's early days in the streaming game.

47
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FISHER INVESTMENTS*

THE WALL STREET JOURNAL.

WSJ.com

June 26, 2013, 7:50 PM ET

Apple Spells Out iTunes Radio Terms

By Hannah Karp and Jessica E. Lessin

Ahead of its launch of an online radio service [Apple](#) circulated terms to independent record labels last week, many of them more generous to the music companies than what rival [Pandora Media](#) currently pays.

Apple intends to pay royalties to labels based on a blend of how many times listeners hear their songs and how much advertising Apple sells, according to the terms, which were reviewed by The Wall Street Journal.

During iTunes Radio's first year, Apple will pay a label 0.13 cents each time a song is played, as well as 15% of net advertising revenue, proportionate to a given label's share of the music played on iTunes. In the second year, that bumps up to 0.14 cents per listen, plus 19% of ad revenue.

That compares to the 0.12 cents Pandora pays labels per listen on its free service. Apple is also offering music publishers more than twice as much in royalties than Pandora does.

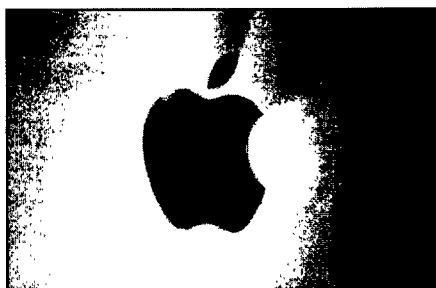
Apple won't have to pay royalties for some performances of songs that are already in listeners' iTunes libraries, or songs that might be on an album that a listener owns just part of. Similarly, "Heat Seeker" tracks selected by iTunes for special promotions, are also exempted. Apple also doesn't have to pay for songs listeners skip before 20 seconds have elapsed. The company only gets to avoid paying royalties for two songs per hour for any given user.

The terms for independent labels are similar but not identical to those given to the three major record companies – [Vivendi](#) SA's Universal Music Group, Access Industries Inc.'s Warner Music Group and [Sony](#) Corp.'s Sony Music Entertainment – which are expected to receive cash advances against future royalties.

An Apple spokeswoman declined to comment.

Pandora was criticized by members of the band Pink Floyd in a recent USA Today opinion piece for complaining it pays too much in royalties to make a profit and asking artists to support its efforts to get a law passed that would cut the fees it pays.

Pandora founder Tim Westergren said Wednesday that it isn't fair to compare Apple's royalty rates with Pandora's because the services work differently, and that different features on the two services could trigger different royalty payments.



"It's apples and oranges," said Mr. Westergren, referring to the two services.

The ad revenue iTunes Radio generates might not necessarily be more significant than Pandora's. People familiar with Apple's thinking said the company is primarily hoping that iTunes Radio will encourage listeners to buy the tracks they like at the iTunes Store and help the tech giant sell more iPhones, iPods and other hardware.

Though music sales are slipping fast across the industry with the growth of subscription streaming services that offer unlimited music for a monthly fee, Apple is likely to stick for now to its business model of selling songs on iTunes. That business has become marginally profitable in recent years, these people said – as long as that model remains sustainable.

The new radio service gives Apple a venue to develop its iAd system – a mobile advertising platform for Apple devices that allows third-party developers to embed their apps with ads, these people added.

The iTunes Radio licensing document also includes several references to terms for the use of music in talk, weather, sports and news programming on the new service. The agreement said Apple wouldn't have to pay the independent labels royalties for snippets of music used in the background of those sorts of programs. But it's unlikely Apple will invest much in creating such programming, given that it has long shied from creating its own content.

Clear Channel Communications Inc. Chief Executive Bob Pittman said recently that only a tiny fraction of the people who listen to iHeartRadio, Clear Channel's digital service, listen online to such programming.

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The New York Times

September 10, 2013

With iTunes Radio, Apple Takes Aim at Pandora

By **BEN SISARIO**

A decade ago, Apple transformed the music business with its iTunes store. Now what the music industry expects from Apple is less of a revolution than a helping hand.

Apple's newest music feature, iTunes Radio, will be released on Sept. 18 as part of its iOS 7 system update, the company announced on Tuesday. The service is a sleek take on Internet radio, and Apple's ability to place the app on millions of its devices gives it an enormous potential audience from Day 1.

"It's a huge opportunity on a global basis to accelerate the transition of radio listeners and advertising dollars from terrestrial to digital," said Stephen Bryan, the executive vice president for digital strategy at the Warner Music Group, which releases music by Green Day, Bruno Mars and hundreds of other acts.

The service is a threat to Pandora Media, which dominates Internet radio. But music and advertising executives say that the magnitude of that threat is unclear, given Apple's relatively late entry into streaming music and Pandora's strong market position. Both offer free streams of music tailored to a user's taste and supported by advertising. In August, Pandora had 72.1 million active users — almost all in the United States — who streamed 1.35 billion hours of music, according to data released by the company.

"At this point Pandora is one of the leading recipients of mobile advertising revenue, and is one of the most popular apps, period, across devices," said Clark Fredricksen, a vice president at eMarketer, a research firm. "It's tough to see it getting killed."

Instead, record labels and music publishers hope that Apple's immense marketing power will attract more advertisers and help popularize Internet radio around the world. iTunes Radio will at first be available only in the United States, but it is expected to be introduced internationally soon. Apple operates iTunes stores in 119 countries.

"It's hard to say that Pandora hasn't helped make Internet radio mainstream already," said Glenn Peoples, the senior editorial analyst at Billboard. "But iTunes Radio can help it grow and can change the impressions of it in the minds of advertisers and sponsors."

Apple is the single largest retailer of music, its downloads providing labels a crucial source of revenue as sales of CD's drop. One feature of iTunes Radio that music companies are particularly grateful for is a prominent button to buy a song as it streams. Subscribers to Apple's iTunes Match feature, for \$24.99 a year, will be able to sync both newly purchased songs and any other songs in their library, such as those imported from CDs, and use the iTunes Radio service ad-free.

In the economy of digital music, one 99-cent download can be worth more than hundreds of streams. Apple's deals with labels call for it to pay 0.13 cents for every song streamed on iTunes Radio during its first year of operation, according to reports in Billboard and elsewhere based on Apple's licensing contracts. That is more than Pandora's current rate of 0.12 cents, and Apple will also pay music companies a portion of the service's advertising revenue.

Apple is entering an already crowded Internet radio market, which besides Pandora includes Clear Channel Communications' iHeartRadio app; radio functions offered by on-demand services like Spotify; and others like Songza that supply ready-made playlists for various occasions, like working out or hosting a dinner party. This week Microsoft expanded its Xbox Music service, which includes a radiolike function, to work on Apple and Android devices.

So far Pandora's investors have not fled. Since news of Apple's plans first emerged a year ago, Pandora's stock has roughly doubled. On Tuesday it closed at \$20.35, up 1 percent for the day.

This article has been revised to reflect the following correction:

Correction: September 26, 2013

An article on Sept. 11 about the new iTunes Radio service misstated the options subscribers would get for \$24.95 a year. They will be able to sync both newly purchased songs and any songs in their libraries, including those imported from CDs, and will be able to use the iTunes Radio service ad-free. iTunes users can already instantly link songs through the cloud to all of their Apple devices free; that feature does not require a \$24.95 yearly payment.

